THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 1405 of 2001
Old F.A.F.O.No. 194 of 1996

United India Insurance Company Limited
Through its Senior Divisional Manager,
17, Edmonston Road Allahabad.

… **Appellant.**

Versus

1. Sri Shyam Sunder S/O Sri Nanhi Singh,
   Resident of Bajpur Co-operative Sugar Factory, Bazpur.
2. M/s Bazpur Co-operative Sugar Factory, Bazpur
   Through its General Manager.

... **Respondents**

Sri D.S.Patni, Adv. learned counsel for the appellant.
None appeared for the respondents.

Date 13-04-2006.

P.C : Hon. B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(for short referred to as the Act)*** against the judgment and award dated 15-2-1996, passed by Labour Compensation Commissioner/Deputy Regional Labour Commissioner Nainital ***(in short the Commissioner)*** in W.C. Case No. 07 of 1994, Sri Shyam Sunder Vs. M/s Bazpur Co-operative Sugar Factory Bazpur, whereby the learned Commissioner awarded compensation of Rs. 61,465/- along with interest @ 6% per annum, i.e. Rs.11,069-20 total Rs. 72,534-20 to the claimant as against the Insurance Company-appellant. Aggrieved, the Insurance Company has come up in appeal.

Relevant facts of the case are the claimant Shyam Sunder filed a claim petition before the learned Commissioner for compensation owing to accidental injuries suffered by him in the course of his employment on 15.5.1992 with the allegation that he was employed under the employment of respondent no.2 as electrician and on the fateful day, in the course of his duty, he met with an accident and sustained injuries including fracture of his femur bone of left leg. He was taken to Civil Hospital Bazpur and

then he was referred to Bareilly and ultimately, he had undergone treatment at Delhi hospital. Due to the injuries, he can now move with the help of crutches and his left leg has shortened by 2 inches. It is alleged that he was getting monthly salary of Rs. 2,500/- and he was aged 52 years. Hence compensation of Rs. 61,236/- along with 6% per annum interest has been claimed.

After registration of the case, summons were issued to the parties. The O.P.-employer filed its written statement and denied the allegations made in the claim petition. It was alleged that the claimant was treated by the employer at different hospitals and the disability was reported to be 25%. It is alleged that the claimant has not suffered permanent disability and he is still employed in the factory. Towards compensation, the claimant has been paid amounts of 7266/- and Rs. 6136/-. It was stated that the claimant was getting Rs. 2130-70 on the date of accident. It was further stated that the establishment of the employer was duly insured with the appellant, which has not been arrayed as a party. The appellant-Insurance Company was subsequently arrayed as party by the claimant.

The appellant filed its written statement and contested the case. It was alleged that the claimant is required to prove the accident. The payment of interest and penalty was denied.

After hearing both the parties and perusing the documents on record, the learned Commissioner found that since the employment has made payment of amount to the claimant in the absence from duty, therefore, it is proved that the claimant suffered injuries in the course of his employment. The learned Commissioner also held that the leg of the claimant was shortened by 2 inches due to the injuries and therefore, his case is covered by permanent disability and relying upon the Apex Court judgment in the case of ***"Pratap Narain Singh Deo Vs. Srinivas Sabata and another" (1976) 1, Supreme Court Cases, 289,*** has passed the impugned award as mentioned above vide order dated 15.2.1996.

The only substantial question of law to be determined in the appeal is whether the learned Commissioner had jurisdiction to fix a percentage of disability at variance with the percentage of disability certified by the doctor.

I have heard learned counsel for the appellant-Insurance Company and perused the entire material on record.

The question whether the claimant has become handicapped or not is sufficiently proved by the certificate issued by the Medical Board duly countersigned by the Chief Medical Officer Nainital dated 6-6-1995. In this certificate it has been certified that the left femur of the claimant is shortening 02 inches and he is physically handicapped. The claimant has examined himself on oath before the learned Commissioner and has specifically stated that due to physical disability, he is unable to perform his duties and he cannot move without the help of attendant. This statement of the claimant was not challenged in the cross-examination. He has also stated that due to disability, he has been removed from the employment.

The above narration of the oral as well as documentary evidence clearly goes to show that the claimant Shyam Sunder suffered accidental injury in the course of his employment due to which he has become permanently disabled. I am fortified in my view by the Apex Court Judgment in ***Pratap Narain Singh*** case (supra) in which it was held that “the injury was of such a nature as to cause permanent disablement and it incapacitated him from performing all work which he was capable of performing, viz. that of a carpenter.” In the instant case, due to disablement, the claimant has lost his job it is not disputed that he is capable of moving with the help of crutches.

Having considered the entire evidence on record, I find that the learned Commissioner has not committed any error in awarding the compensation. The ratio of disability was fixed by the learned Commissioner on the basis of the Apex Court Judgment supra. Hence there is no substance in the substantial question of law framed whether the Workmen Compensation Commissioner has jurisdiction to fix a percentage of disability at variance with the percentage of disability certificate given by qualified medical practitioner.

Regarding the question whether the Insurance Company is not liable for payment of interest, it would suffice to mention that that the Insurance Company has failed to show under the contract of insurance, there is barring clause that the Insurance Company shall not pay the interest. Hence the argument that the Insurance Company is not liable to pay the interest is not tenable.

The other questions raised in the memo of appeal are not substantial questions of law.

The appeal is hereby dismissed. The impugned award dated 15.2.1996 is affirmed. No order as to costs.

The compensation amount deposited before the learned Workmen Compensation Commissioner Nainital be released in favour of the claimant.

(B.S. Verma, J.)

RCP